Office-Supreme Court, U.S.
FILED
SEP 6 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-65

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

LEASEWAY TRANSPORTATION CORP. and
RAYMOND J. REHOR,
Petitioners,

v.

UNITED STATES OF AMERICA and
JAMES SIMEO,
Respondents.

BRIEF *AMICUS CURIAE* OF THE STANDARD OIL COMPANY IN SUPPORT OF PETITION OF LEASEWAY TRANSPORTATION CORP. AND RAYMOND J. REHOR FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JERRY N. GAUCHE
(Counsel of Record)
DALE P. SHRALLOW
THE STANDARD OIL COMPANY
200 Midland Building
Cleveland, Ohio 44115
(216) 575-4634

TERRENCE G. PERRIS
SQUIRE, SANDERS & DEMPSEY
1800 Huntington Building
Cleveland, Ohio 44115
(216) 687-8647

Counsel for Amicus Curiae
The Standard Oil Company

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. THE COURT SHOULD CLEARLY DEFINE THE STANDARDS FOR APPLICATION OF THE RELEVANCE REQUIREMENT OF SECTION 7602 IMPOSED BY *UNITED STATES V. POWELL*	3
II. THE COURT NEEDS TO EXAMINE AND ADDRESS THE COMPETING POLICY CONSIDERATIONS ASSOCIATED WITH THE APPLICATION OF SECTION 7602	12
CONCLUSION	16

TABLE OF AUTHORITIES

CASES:	Page
United States v. Arthur Young & Co., 677 F.2d 211 (2d Cir. 1982), *cert. granted*, 51 U.S.L.W. 3611 (U.S. Feb. 22, 1983) (No. 82-687)	6,7,10,12
United States v. Bisceglia, 420 U.S. 141 (1975)	10,11
United States v. Coopers & Lybrand, 550 F.2d 615 (10th Cir. 1977)	5,6
United States v. Egenberg, 443 F.2d 512 (3d Cir. 1971)	4
United States v. El Paso Co., 682 F.2d 530 (5th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3400 (U.S. Nov. 23, 1982) (No. 82-716)	7,8,10
United States v. Euge, 444 U.S. 707 (1980)	12,13
United States v. First Chicago Corp., 79-1 U.S.T.C. ¶9111 (N.D. Ill. 1978)	8
United States v. Harrington, 388 F.2d 520 (2d Cir. 1968)	4
United States v. Matras, 487 F.2d 1271 (8th Cir. 1973)	4,5,6,10,11
United States v. Noall, 587 F.2d 123 (2d Cir. 1978)	8,9
United States v. Powell, 379 U.S. 48 (1964)	*passim*
United States v. Theodore, 479 F.2d 749 (4th Cir. 1973)	6,11
United States v. Turner, 480 F.2d 272 (7th Cir. 1973)	4
United States v. Wyatt, 637 F.2d 293 (5th Cir. 1981)	4

TABLE OF AUTHORITIES — Continued

	Page
STATUTES:	
15 U.S.C. §78m (1977)	13
26 U.S.C. §7602 (1976)	*passim*
26 U.S.C. §7605 (1976)	11
OTHER AUTHORITIES:	
Internal Revenue Manual (Audit) (CCH) Case Managers Handbook, Ch. 600, §622	15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-65

LEASEWAY TRANSPORTATION CORP. and
RAYMOND J. REHOR,
Petitioners,

v.

UNITED STATES OF AMERICA and
JAMES SIMEO,
Respondents.

BRIEF *AMICUS CURIAE* OF THE STANDARD OIL COMPANY IN SUPPORT OF PETITION OF LEASEWAY TRANSPORTATION CORP. AND RAYMOND J. REHOR FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

This brief in support of Petitioners' petition for a writ of certiorari is submitted with the written consent of counsel to all parties, copies of which have been filed with the Clerk of the Court.

INTEREST OF THE *AMICUS CURIAE*

The *amicus curiae* is The Standard Oil Company, an Ohio corporation which with its subsidiaries is commonly referred to as "Sohio." Like the petitioner Leaseway Transportation Corporation, Sohio is a publicly held corporation that has a well-established internal audit report procedure. Consequently, Sohio has an immediate interest in the issue presented by this case, namely the scope of the authority of

the Internal Revenue Service to obtain internal audit reports[1] in the course of an audit examination through the enforcement of a summons issued under Section 7602 of the Internal Revenue Code. In view of the present conflict of authority on the proper standard of relevance applicable to such a summons, Sohio is submitting this brief in an effort to persuade the Court to resolve, in a fashion that satisfactorily accommodates competing policy considerations, the legal issues arising out of the continued efforts of the Internal Revenue Service to seek enforcement of summonses issued to procure internal audit reports.

SUMMARY OF ARGUMENT

The *amicus curiae* respectfully submits that there are two reasons why this Court should grant Petitioners' petition for a writ of certiorari. First, this case affords the Court the opportunity to resolve the uncertainty under present law as to the circumstances under which the Internal Revenue Service ("IRS" or "Service") can obtain judicial enforcement of summonses of internal audit reports issued under Section 7602 of the Internal Revenue Code. Specifically, the courts are in conflict as to whether the applicable standard of relevance required under *United States v. Powell*, 379 U.S. 48 (1964), is one which imposes upon the IRS the burden of demonstrating the existence of a "reasonable expectation" that the documents sought will "shed light" upon the correctness of the tax return in question or is instead one under which the IRS need only show that the documents will make it more "convenient" for the IRS to discharge its responsibility of verifying the accuracy of the tax return. The Court should consider this case in order to

---

[1] A detailed discussion of the nature and purpose of internal audit reports is contained at pp. 13-14 of this Brief. *See also* Petition for Writ of Certiorari at 6.

resolve this legal conflict as it relates to internal audit reports and to fashion uniform criteria that make it clear that more than administrative convenience must be established to satisfy the relevance requirement of *Powell*.

Second, this case serves as an appropriate vehicle for the Court to examine the scope of the IRS's power to procure enforcement of summonses under Section 7602 in light of the substantial countervailing policy considerations associated with the exercise of the summons power. The Court should circumscribe the IRS's ability to enforce summonses in order to achieve a satisfactory balance between the government's need for an efficient and effective administration of the federal income tax and the public's interest in protecting the corporate taxpayer's internal records from unwarranted disclosure.

ARGUMENT

I. THE COURT SHOULD CLEARLY DEFINE THE STANDARDS FOR APPLICATION OF THE RELEVANCE REQUIREMENT OF SECTION 7602 IMPOSED BY *UNITED STATES V. POWELL*.

Section 7602 vests the IRS with summons power in connection with the examination of income tax returns. That section provides, in part:

> "For the purpose of ascertaining the correctness of any return . . . the Secretary is authorized —
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
>
> (2) To summon . . . any officer or employee [of the taxpayer] . . . to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data . . . as may be relevant or material to such inquiry."

The criteria for judicial enforcement of an IRS summons under Section 7602 were established by this Court in *United States v. Powell*, 379 U.S. 48 (1964). In *Powell*, the Court held that to obtain enforcement of a Section 7602 summons, the IRS must make a preliminary showing that (1) the investigation will be conducted pursuant to a legitimate purpose; (2) the inquiry will be relevant to that purpose; (3) the information sought is not already within the possession of the IRS; and (4) the administrative steps required under the Internal Revenue Code have been followed.

Although the greatest source of controversy with respect to the enforceability of IRS summonses has proved to be the second element of the *Powell* test—the requirement of relevancy—this Court has not heretofore had occasion to articulate a consistent standard for determining the degree of relevance necessary to enforce a summons issued under Section 7602. Unfortunately, in the absence of guidance from this Court, the lower federal courts have applied conflicting approaches to both the interpretation and the application of the relevance test.

The test most often utilized by the courts is that the summons must seek information that "might throw light upon the correctness of the taxpayer's return." *United States v. Turner*, 480 F.2d 272 (7th Cir. 1973); *United States v. Egenberg*, 443 F.2d 512 (3d Cir. 1971); *United States v. Wyatt*, 637 F.2d 293 (5th Cir. 1981). Most courts, however, have refined this standard by requiring, as a precondition to summons enforcement, that the government demonstrate "a realistic expectation rather than an idle hope that something may be discovered." *United States v. Matras*, 487 F.2d 1271 (8th Cir. 1973); *United States v. Harrington*, 388 F.2d 520 (2d Cir. 1968). Nevertheless, while the courts have embraced the "might shed light"/"reasonable expectation" test rather consistently, an examination of the case law in this area reveals that, in

practical application, this frequently articulated standard has received a widely varying range of interpretations, resulting in the uneven application of the relevance requirement.

One manifestation of the divergent approaches that the courts have adopted in applying the "might shed light" standard is the cases dealing with the enforceability of summonses to procure tax accrual workpapers. In *United States v. Coopers & Lybrand*, 550 F.2d 615 (10th Cir. 1977), the Tenth Circuit affirmed the district court's finding that tax accrual workpapers were not relevant to the purpose for which they were sought, namely the determination of income tax liability, and accordingly denied enforcement of the IRS summons that sought the production of the workpapers. As one element of its reasoning, the court recognized that documents such as these may become the target of a summons not because of any inherent relevancy to the ascertainment of tax liability but because of their value as a roadmap to the potential weaknesses in the return. In this regard, the court endorsed the view expressed by the Eighth Circuit in *Matras, supra*, in which the Service's generalized claim of relevance with respect to internal corporate documents had been denied, that "[t]he term 'relevant' connotes and encompasses more than 'convenience.' " If it did not, the Tenth Circuit, citing *Matras*, was quick to note,

> "it is difficult to imagine corporate materials that might not contribute to a more comprehensive understanding of the workings of the corporation, and thus, according to the government, be deemed relevant to the tax investigation."

550 F.2d at 621.

The court in *Coopers & Lybrand* emphasized that the summons power provided by Section 7602 does not consti-

tute a license to examine a taxpayer's records where no reasonable basis for the investigation exists. Quoting *United States v. Theodore*, 479 F.2d 749 (4th Cir. 1973), the court observed:

> "A summons will be deemed unreasonable and unenforceable if it is overbroad and disproportionate to the end sought. . . . The Government cannot go on a 'fishing expedition' through appellants' records."

550 F.2d at 621.

On the other hand, in *United States v. Arthur Young & Co.*, 677 F.2d 211 (2d Cir. 1982), *cert. granted*, 51 U.S.L.W. 3611 (U.S. Feb. 22, 1983) (No. 82-687), the Second Circuit manifested a markedly different view of the relevance requirement. While acknowledging the "might shed light" test as the operative standard, that court held tax accrual workpapers similar to those considered in *Coopers & Lybrand* to be relevant to the Service's examination. In so doing, the court squarely rejected the thinking of *Coopers & Lybrand* as to the proper application of that test:

> "Appellants derive considerable support for the proposition that this material is irrelevant from the Tenth Circuit's decision in *Coopers & Lybrand*, . . . and from *United States v. Matras* . . . , where the Eighth Circuit refused to enforce a §7602 summons for taxpayer's proposed budgets. The reasoning in both cases can be summed up as follows: Tax liability depends on the taxpayer's actual transactions, not on what the taxpayer thinks and plans. Tax accrual workpapers reflect what the taxpayer—and his accountant—think about transactions that have already taken place; budgets reveal how the taxpayer hopes to conduct his affairs in the future. They are thus both irrelevant to the question of actual transactions, and therefore to the issue of liability for taxes. These courts conceded that both sorts of documents would be convenient to the IRS

> because they give the Service a 'road map' for following the management of the taxpayer's business. They went on to hold, however, that '[t]he term "relevant" connotes and encompasses more than "convenience". ' . . . Consequently, they refused to require that the documents requested be turned over to the government.
>
> We cannot agree with such a restrictive definition of relevance."

677 F.2d at 218.

In finding that the summons satisfied the "might throw light" standard, the court reasoned:

> "The documents at issue here certainly pass this low threshold of relevance. Different tax positions lead to different amounts of liability. It is difficult to say that the assessment by the independent auditor of the correctness of positions taken by the taxpayer in his return would not throw 'light upon' the correctness of the return."

677 F.2d at 218-19. Thus, it is plain that the Second Circuit's determination of relevance was firmly rooted in its view that the papers derive their relevance from their perceived convenience to the Service. Somehow lost in the court's preoccupation with administrative convenience, however, was the familiar proposition that the IRS must establish relevance by showing a "reasonable expectation" —not merely an "idle hope"—that the targeted documents would bear directly on the correctness of the tax return.

The Fifth Circuit adopted a similar approach in *United States v. El Paso Co.*, 682 F.2d 530 (5th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3400 (U.S. Nov. 23, 1982) (No. 82-716), when it too held that tax accrual workpapers were relevant on the articulated ground that they might shed light on the corporation's tax liability. Like *Arthur Young*,

however, *El Paso* bespeaks an implicit rejection of the "reasonable xpectation" standard in favor of a much lower threshold, one that can be met by a mere showing that the documents are valuable by virtue of the convenience they provide the Service. This is evident from the court's statement that

> "Documents that focus and concentrate the Service's energy on questionable positions in the return . . . are highly relevant."

682 F.2d at 537.

The disparity that has emerged in the application of the relevance requirement has also revealed itself in the area of internal audit reports. In *United States v. First Chicago Corp.*, 79-1 U.S.T.C. ¶9111 (N.D. Ill. 1978), the court, applying the reasonable expectation test, concluded that many of the taxpayer's internal audit reports were not relevant. There the court wrote:

> "This Court has not found documents relevant which are exclusively discussions of internal operating procedures or of the efficiency with which procedures are being followed. Nor have we found relevant reports which are spot-checks of individual departments within respondent, but which make passing references to individual, *de minimis* transactions."

79-1 U.S.T.C. at 86,037.

A directly contrary result, however, was reached in *United States v. Noall*, 587 F.2d 123 (2d Cir. 1978), where the court enforced a summons to obtain internal audit reports on the ground that they "might throw light upon the correctness of the return." The court was led to this conclusion, however, less by its belief that such reports were likely to bear directly on the accuracy of the return than by its conviction that the reports would serve as a convenient tool to the Service in its examination of the tax return. Thus, the court observed:

> "[T]he internal audit reports and related work papers pass the applicable test. Clearly the purposes of the internal audit include the detection of overstatements or understatements of revenues or expenses, and of identifying accounting procedures that would lead to these. If the internal auditors have ascertained an understatement of revenues or an overstatement of expenses, this plainly might throw light on the correctness of the returns. We find no significance in the point, stressed by appellant, that the internal audit reports and related work papers were not used in preparing [the taxpayer's] income tax returns. The Commissioner's interest lies in whether the tax returns correctly reflected [the taxpayer's] actual income, not simply whether they were correctly prepared from the books of account and other records used."

587 F.2d at 126.

Thus, the differing solicitude that the various courts have shown for the "convenience" of the IRS has bred considerable confusion and inconsistency in the approach that the federal courts have adopted to the requirement of relevance. On the one hand, the Second and the Fifth Circuits appear to have imparted virtual talismanic significance to whether the summoned documents would enhance the administrative convenience of the IRS in the performance of its audit function. In practice, this has inevitably resulted in a much more relaxed threshold of relevance that is seemingly detached from any direct connection to the correctness of the return. In the present case, it is plain that the Sixth Circuit has aligned itself with this more relaxed approach of the Second and Fifth Circuits. In contrast, the Eighth and Tenth Circuits have explicitly found such assertions of administrative convenience an insufficient basis to support a determination of relevance. These courts have given meaningful content to the proposition that the IRS must demonstrate "a realistic ex-

pectation rather than an idle hope." In short, although the courts frequently appear to be articulating the governing standard of relevance in similar terms, in practice they have been applying it very differently. The need for guidance from this Court is thus apparent. This case, together with *Arthur Young, supra,* in which the Court has granted certiorari, and *El Paso, supra,* in which certiorari is pending, presents the Court with an appropriate opportunity to resolve these divergent approaches to the relevance requirement.

The *amicus curiae* respectfully submits that the Court should take this opportunity to give renewed content to the standard requiring a demonstration of "realistic expectation rather than an idle hope" of relevance to the taxpayer's tax return. Otherwise, it seems inescapable that, if administrative convenience becomes the touchstone of relevance, in the words of the *Matras* court,

> "it is difficult to imagine corporate materials that might not contribute to a more comprehensive understanding of the workings of the corporation and thus, according to the government, be deemed relevant to the tax investigation."

487 F.2d at 1275.

In short, a standard guided by convenience is no standard at all. By its terms, it encompasses documents and records bearing the most attenuated relationship to the return. Under this test, an item derives its relevance not from any likelihood that it will uncover an error in the return, but from the mere possibility that it could. Such a standard will invite and sanction "fishing expeditions" of the sort that were denounced in *Matras*—and about which this Court expressed concern in *United States v. Bisceglia*, 420 U.S. 141, 150-151 (1975)—since virtually any corporate document carries the potential for leading to mistakes in the return and thus would be considered relevant under this standard.

Thus, it is important that the Court fashion a balanced standard that reflects not only the concern that the IRS not be unduly restricted in the pursuit of its audit function, but also the fact that the relevance requirement was intended as a meaningful restriction on the summons power. The flaw in the convenience standard is that it exalts the former consideration and gives short shrift to the latter.

In this connection, the application of a "convenience" standard flies in the face of Section 7605(b) of the Internal Revenue Code, which provides that "[n]o taxpayer shall be subjected to unneccessary examination or investigations." Implicit in that provision is the assumption that some examinations of the taxpayer and its records are unnecessary. The adoption of a relevance threshold turning only on convenience, however, would quickly undermine the objective of this provision, since virtually any examination of corporate records would become "necessary" to the administrative convenience of the IRS.

In addition, such an open-ended standard of relevance would substantially erode the important role which this Court has recognized that the federal courts must play in preventing abuses in the summons power conferred on the IRS. *United States v. Bisceglia, supra*, at 146. If, as the Court emphasized in *Bisceglia*, a summons "must be scrutinized by a court to determine whether it seeks information relevant to a legitimate investigative purpose," *id.*, the courts should not be permitted to transform such scrutiny into a sterile exercise by applying an all-encompassing standard of relevance. Indeed, it would seem particularly significant to the point at issue that the Court in *Bisceglia* explicitly singled out both *Matras, supra*, and *Theodore, supra*, as instances where "the federal courts have taken seriously their obligation to apply this standard to fit particular situations." *Id.*

Whichever view of relevance the Court ultimately embraces, the confusion and uncertainty fostered by the absence of a uniform relevance standard warrant the Court's immediate consideration of this issue. Only by resolving this issue can the Court hope to eliminate the disparate treatment of similarly situated taxpayers that has resulted from the application of varying standards of relevance. It is especially appropriate that the Court consider the question presented herein in view of the fact that it has previously decided to address the parallel question raised in *Arthur Young* with respect to tax accrual workpapers. These two issues share a common foundation and accordingly should be considered in tandem.

II. THE COURT NEEDS TO EXAMINE AND ADDRESS THE COMPETING POLICY CONSIDERATIONS ASSOCIATED WITH THE APPLICATION OF SECTION 7602.

Apart from the need to settle the conflicting approaches that have arisen in the application of the relevance requirement of Section 7602, there exists an equally compelling reason for this Court to consider the issue herein presented. Although Section 7602 grants the IRS extremely broad powers in terms of its ability to issue a summons for documents pertinent to an examination of an income tax return, the Court expressly acknowledged in *United States v. Euge*, 444 U.S. 707 (1980), that this power should be tempered, where appropriate, to accommodate competing policy considerations:

> "[T]his Court has consistently construed congressional intent to require that if the [IRS] summons authority claimed is necessary for the effective performance of congressionally imposed responsibilities to enforce the tax code, that authority should be upheld absent ex-

press statutory prohibition or *substantial countervailing policies*." (Emphasis supplied.)

444 U.S. at 711.

In the case of internal audit reports, there are substantial countervailing policies that warrant restricting the IRS summons power to those instances where the government can establish a reasonable expectation that the reports are directly relevant to the review of an income tax return.[2]

---

[2] These policies have found explicit legislative recognition in Section 102 of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78m(b)(2), wherein Congress mandated that

> "Every issuer which has a class of securities registered pursuant to section 781 of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—
>
> (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
>
> (B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—
>
> (i) transactions are executed in accordance with management's general or specific authorization;
>
> (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
>
> (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
>
> (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

In addition, the Securities and Exchange Commission (in ASR No. 123) has strongly advised, and since 1978 the New York Stock Exchange has required, that all domestic listed companies maintain audit committees of outside directors to supervise the internal audit function.

Internal audit reports are designed primarily to insure compliance with internal policies and procedures and to gauge efficiencies at various levels of operation. Such reports yield discernible benefits to the public. First, the preparation of such reports encourages and helps to assure that corporate taxpayers will comply voluntarily with the numerous statutes and regulations to which they are subject, such as those dealing with securities regulation, environmental protection, and equal employment opportunity. The societal benefits deriving from this type of self-regulation that internal audit reports promote cannot be disputed. Second, the preparation and utilization of internal audit papers help to preserve and improve managerial and operational efficiency by virtue of the information they provide. The public is the ultimate beneficiary of the by-products of such efficiency—lower prices, greater returns to investors, and higher employment, to name a few. It was plainly the recognition of such considerable societal benefits that stimulated the legislative and administrative efforts to require publicly held corporations to institute such internal procedures. However, many of these benefits will inevitably be blunted if the IRS summons power is not tempered by such countervailing considerations.

If the IRS is permitted to secure internal audit reports absent a showing of reasonable expectation that the reports will bear directly on the accuracy of the income tax return, the preparation and effectiveness of such reports will be seriously diminished. The value of internal audit reports derives in large measure from the fact that they represent an honest assessment of compliance with corporate policies and statutory and regulatory requirements. Such full and frank disclosure will no doubt dissipate once it becomes known that the Service can obtain virtual routine access to such reports without any demonstration of their pertinence

to its audit examination.[3] In short, permitting the Service to conduct its audit investigations in such an indiscriminate manner will produce a chilling effect on the willingness of company personnel to approach such reports with candor and completeness. As a consequence, the public benefits resulting from the uninhibited preparation and utilization of internal audit reports will be lost.

Ironically, this sacrifice will in the final analysis yield no offsetting benefit through improved IRS audits, since the chilling effect of such routine disclosure will effectively eliminate any substantial value that such reports might have had to the Service — even in those instances where the Service could have satisfied the "reasonable expectation" threshold. In the end, allowing IRS access to internal audit reports on a regular basis will preclude the numerous social benefits flowing from an unimpeded internal audit program with no compensating improvement in IRS audit operations. In the face of such a no-win result, it is difficult to conceive a clearer case in which countervailing considerations warrant some reasonable qualification to the IRS summons power. It is accordingly both appropriate and necessary that the Court moderate the IRS summons power to reflect the coordinate legislative recognition of the benefits stemming from an uninhibited internal audit procedure.

It is for these reasons that this Court should tailor criteria for the application of the relevance standard laid down in *Powell* which balance the government's desire for the accurate and efficient determination of corporate tax liability with the public's need that corporate taxpayers be assured of confidentiality with respect to internal audit re-

---

[3] Since 1980 the IRS auditors have in fact been instructed as part of their "preliminary audit work" to review basic records of the taxpayer which "as a minimum should include," *inter alia*, internal audit reports. II Internal Revenue Manual (Audit) (CCH) Ch. 600, §622(2)(a) (1980).

ports absent a showing of immediate and identifiable relevance. The public benefits engendered by the effective use of internal audit reports justify affording such reports protection from disclosure except in extraordinary and well-defined circumstances.

CONCLUSION

There are two reasons why this Court should decide at this time the circumstances in which internal audit reports are subject to disclosure in the course of an IRS audit examination. First, there is a manifest conflict of decisional authority in this area which requires resolution. Second, there are compelling policy considerations justifying certain limitations upon the scope of the IRS's summons power which need to be addressed by this Court. Accordingly, the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

JERRY N. GAUCHE
(Counsel of Record)
DALE P. SHRALLOW
THE STANDARD OIL COMPANY
200 Midland Building
Cleveland, Ohio 44115
(216) 575-4634

TERRENCE G. PERRIS
SQUIRE, SANDERS & DEMPSEY
1800 Huntington Building
Cleveland, Ohio 44115
(216) 687-8647

Counsel for Amicus Curiae
The Standard Oil Company